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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,479

05/10/2005

Olaf Such

DE 020241

7006

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7590

01/21/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

KAHELIN, MICHAEL WILLIAM

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

01/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,479	<b>Applicant(s)</b> SUCH ET AL.	
	<b>Examiner</b> MICHAEL KAHRELIN	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 12-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/21/2008.
2. Applicant's election without traverse of claims 1-11 in the reply filed on 11/21/2008 is acknowledged.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (US 5,778,880, hereinafter "Chen").
5. In regards to claim 1, Chen discloses a wearable system comprising an electronic device (1 and 4) mounted on a carrier (3 and 22), wherein the electronic device comprises electrodes (4 and 23 on the left and right side of the device), a portion of which extend through the carrier for facilitating the fixation of the electrodes on the carrier (see figure below) and shaped to fit on the carrier's receiving portion (see underside of "3").

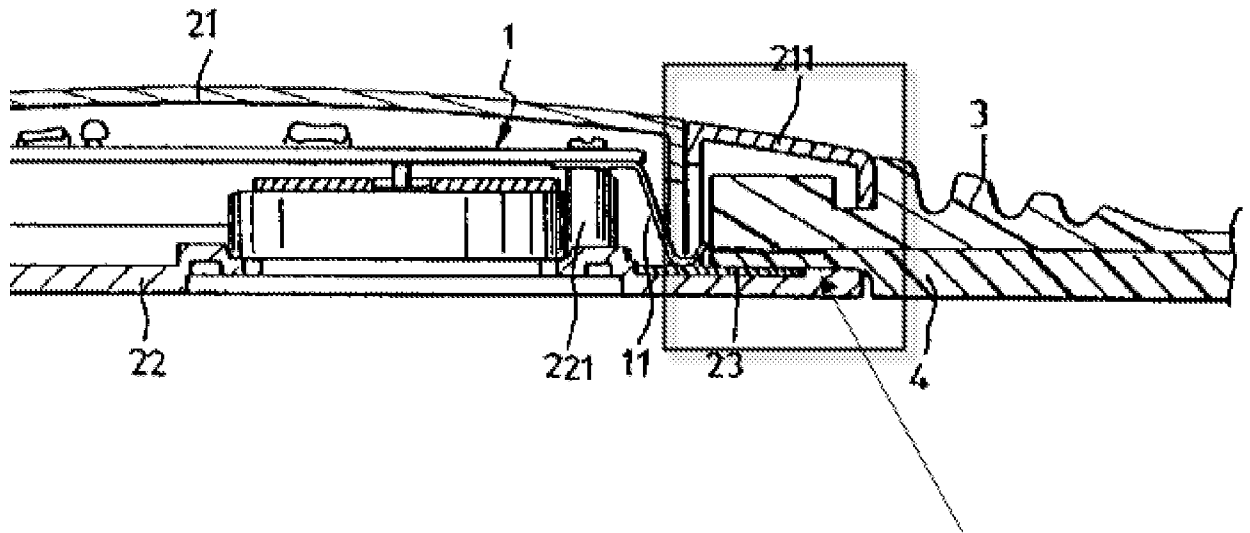


FIG. 2

Electrode extending through  
(at least a portion of) the  
carrier

- 6.
7. In regards to claim 2, the electronic device comprises electronic means (1) operating with the electrodes (through 11), being integrated into one unit (as in Fig. 2), and arranged to be removably attached to the carrier (as in Fig. 1).
8. In regards to claim 3, the electrodes are conductive rubber (col. 2, line 31).
9. In regards to claim 6, the carrier is integrated into clothing (a belt; Fig. 3).
10. In regards to claims 7 and 8, the system monitors the cardiac activity of an individual's skin (abstract).
11. In regards to claims 9 and 10, the surface of each electrode (4) is comprised of a first conductive rubber or plastic material, and the remainder (23) is comprised of a second material.

***Claim Rejections - 35 USC § 103***

**12.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**13.** This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**14.** Claim 5 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chen. The electrodes of Chen's device are dimensioned to notches in the carrier and are "button-shaped" because they are generally flat. Alternatively, Chen discloses the essential features of the claimed invention except for explicitly indicating that the electrodes are "button-shaped." It is well known in the electrode arts to provide button-shaped electrodes to provide the predictable results of electrodes that maintain intimate contact with the skin. Therefore, it would have been obvious to one having ordinary skill in the art at the time the

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invention was made to modify Chen's device by providing button-shaped electrodes to provide the predictable results of electrodes that maintain intimate contact with the skin.

**15.** Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen. Chen discloses the essential features of the claimed invention, including a second material comprising metal (col. 2, line 44) but does not disclose electrodes made of conductive plastic, or that the metallic material is copper. It is well known in the art to fabricate electrodes of conductive plastic to provide electrodes that are flexible and inexpensive to manufacture, and contacts, such as Chen's, made of copper to provide the predictable result of a highly conductive material with low resistivity.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Chen's invention with electrodes of conductive plastic to provide the predictable results of electrodes that are flexible and inexpensive to manufacture, and a second material comprising copper to provide the predictable result of a highly conductive material with low resistivity.

### ***Response to Arguments***

**16.** Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection, necessitated by amendment. In regards to claim 1, the Examiner maintains the rejection in view of Chen because the claim language does not require that a portion of the electrode extends completely from one side of the carrier to the other, but only "through." The examiner considers the limitation "through" to only require passage through a portion of the carrier.

***Conclusion***

**17.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Besson et al. (US 6,577,893) is one of many teachings of button-shaped electrodes and Matsumura et al. (US 6,161,036) is one of many teachings of providing copper electrodes.

**18.** Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL KAHELIN** whose telephone number is (571)272-8688. The examiner can normally be reached on M-F, 8-4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Kahelin/  
Examiner, Art Unit 3762

/Angela D Sykes/  
Supervisory Patent Examiner, Art Unit 3762